

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEMOKALAM NJEMANZE,

Movant,

-v.-

UNITED STATES OF AMERICA,

Respondent

20 Civ. 5359 (KPF)
18 Cr. 117-7 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Movant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. In reviewing the motion papers, the Court is concerned that Movant, while researching and drafting his motion, inadvertently relied on sources that may not apply to his case. In order to advance his best arguments, Movant is invited to file an amended motion. Movant is encouraged to review the transcripts from his sentencing and plea (attached here), as well as to cite Second Circuit precedent (which is binding on this Court), instead of Fifth Circuit precedent (which is not binding).

Movant is invited to file an amended motion on or before August 31, 2020. Should he decline to file an amended motion and choose to proceed with his current motion, the Court requests that Movant notify the Court as soon as possible so that the Court may set a briefing schedule.

SO ORDERED.

Dated: July 16, 2020
New York, New York

A copy of this Order was mailed by Chambers to:

Kemokalam Njemanze
Reg. No. 86803-054
Federal Correctional Institution
P.O Box 3850
Adelanto, CA 92301



KATHERINE POLK FAILLA
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 117 (KPF)

5 KEMOKALAM NJEMANZE,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 11, 2019
4:10 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,
16 United States Attorney for the
17 Southern District of New York
ROBERT B. SOBELMAN
Assistant United States Attorney

18 TODD A. SPODEK
19 Attorney for Defendant

20 ALSO PRESENT:

21 GREGORY HOLM, Secret Service
22 LISA CHAN, Pretrial Services
23
24
25

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(Case called)

MR. SOBELMAN: Robert Sobelman, for the United States. I'm joined at counsel table by Special Agent Gregory Holm, of the United States Secret Service. Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. CHAN: Good afternoon, your Honor. Lisa Chan, for pretrial.

THE COURT: Thank you very much. I have your report, sir.

MR. SPODEK: Good afternoon, your Honor. Todd Spodek, for Mr. Njemanze.

THE COURT: Okay. And may I address your client directly?

MR. SPODEK: Yes, your Honor. Of course.

THE COURT: Thank you.

Sir, good afternoon. Tell me, first, how do you pronounce your last name?

THE DEFENDANT: Njemanze.

THE COURT: Njemanze, am I saying it correctly?

THE DEFENDANT: Yes.

THE COURT: Mr. Njemanze, it is my understanding, sir, that this is your first appearance in federal court. Is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: I understand.

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1 So there are several things we are going to do today,
2 and if at any time what I am saying to you doesn't make sense,
3 just let me know, and I will clarify things for you.

4 As you may have figured out, I'm Katherine Failla, I'm
5 a United States district judge, and it is my understanding that
6 you have agreed, or consented, to the waiver of indictment and
7 the allowing of a filing of an information.

8 Is that correct, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And so I'll talk to you about that a
11 little bit in a moment, but because of that, I want to talk to
12 you about what happened now that your case has been assigned to
13 me.

14 Let me begin by asking some very preliminary
15 questions.

16 So far, sir, do you understand everything that I have
17 said?

18 THE DEFENDANT: Yes, I do, ma'am.

19 THE COURT: Okay.

20 Could I understand from the government, please, the
21 date and the time of the arrest?

22 MR. SOBELMAN: Mr. Njemanze was arrested --
23 self-surrendered today at 10:00 a.m.

24 THE COURT: Surrendered at 10:00 a.m. Thank you very
25 much.

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1 Mr. Njemanze, the purpose of this proceeding is to
2 advise you of your rights, to talk to you about your right to
3 counsel, to determine whether there are circumstances that
4 would allow you to be released on bail, and then what's a
5 little bit different about this case is, based on the
6 conversations your attorney has had with the government, it is
7 my understanding that you wish to have the filing of the
8 information, and you wish to enter a guilty plea to that
9 information.

10 So that's a lot of things happening this afternoon,
11 but are you aware of -- and is that what you wish to happen?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: It is my understanding -- Mr. Spodek is
14 retained by you, sir, as counsel?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Mr. Spodek, let us talk.

17 MR. SPODEK: Sure.

18 THE COURT: Because I believe you've appeared in an
19 earlier case --

20 MR. SPODEK: Yes, your Honor.

21 THE COURT: -- that's somehow related to this matter.

22 So let me understand your view, sir, and then the
23 government's views about the inquiry that I should undertake of
24 Mr. Njemanze to make sure he's aware of any potential
25 conflicts.

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1 MR. SPODEK: Sure.

2 Earlier on in a case, the case with the same
3 individuals involved, I did represent a defendant in that
4 matter for plea purposes. I'm no longer representing him. My
5 investigation with my prior client, there was no overlap
6 between these two individuals, they never spoke, they don't
7 know of each other, there's no information that either of them
8 have as to the other and/or their role, or capacity, or
9 anything.

10 I also spoke with Mr. Njemanze about the same
11 situation, and he assured me that he didn't know my other
12 client and didn't have any other information about him and/or
13 his involvement in this or knew anything about him. So I
14 explained to him that there potentially could be a conflict and
15 made sure that he understood that, and he said he had no issue
16 whatsoever. We talked about this previously with the
17 government, and I understand, just for precaution purposes,
18 your Honor, to let your Honor know about it, and you can
19 inquire certainly of my client.

20 THE COURT: Thank you.

21 Mr. Sobelman, do you have the same perspective, sir?

22 MR. SOBELMAN: Yes, your Honor. The government's not
23 aware of, aside from their involvement in an overall scheme,
24 any personal interaction or knowledge of Mr. Spodek's prior
25 client and Mr. Spodek's current client of each other, and, in

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1 our view, there is, I guess, a theoretical potential conflict
2 that we wanted to make sure the defendant and the Court is
3 aware of, but we don't believe there's any actual conflict at
4 all.

5 THE COURT: So you're not asking me, neither side is
6 asking me, for a full robust Curcio proceeding, more of a more
7 preliminary inquiry; is that correct?

8 MR. SOBELMAN: That's correct, your Honor.

9 THE COURT: All right.

10 Again, Mr. Spodek, may I address your client directly?

11 MR. SPODEK: Yes, of course, your Honor.

12 THE COURT: Thank you.

13 Mr. Njemanze, I want to make sure you understand the
14 conversations that I was just having with your attorney and
15 with the attorney for the government. Because Mr. Spodek
16 represented another individual involved in this matter at an
17 earlier proceeding, the concern that one might have is that you
18 might not have his undivided attention or his undivided
19 representation. What I understand from the representations
20 that have been made to me, by him and by the government, is
21 that this is one of those circumstances in which you and the
22 other individual may have been involved in this matter, but
23 didn't know each other, had no overlap of actions, and,
24 therefore, information that Mr. Spodek might have that is
25 specific to that prior representation would not be shared with

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1 you, would not aid you, would not harm you, would not do
2 anything. And so I will ask you, sir: Have you spoken with
3 Mr. Spodek about his prior representation?

4 THE DEFENDANT: Yes, ma'am, I have.

5 THE COURT: Were you listening today when he and the
6 prosecutor discussed their understanding of the knowledge that
7 he would have from that prior representation?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Is that your understanding as well, that
10 he knows something about representing this other person, and
11 knows something from representing you, and doesn't have any
12 overlap between the two?

13 Is that your understanding, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: So with that in mind, do you waive any
16 conflicts that might otherwise adhere anything that would
17 result from his prior representation?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I understand that. I don't believe there
20 is a conflict, but I do think you and I both have the same base
21 of knowledge about it. You have the right, of course, sir, to
22 waive it, and I understand that you're so doing.

23 Again, because I believe in making sure everything is
24 out there, the concern that would be had is that there might be
25 information that he has about you or information that he might

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1 have about that other client that might impact his
2 representation of the other of you.

3 Do you have that understanding, sir?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: And I'm now understanding that he no
6 longer represents this other individual, so information from
7 you won't be used in any respect, and the information that he
8 has from that prior representation has no bearing on your case.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes, ma'am, I do.

11 THE COURT: Okay. Thank you very much. Now I
12 understand that.

13 So, Mr. Spodek, you will remain his retained counsel
14 in this case.

15 Mr. Sobelman?

16 MR. SOBELMAN: Yes, your Honor, just for clarity of
17 the record, I don't think any of us actually said the name of
18 the other client.

19 THE COURT: No. Do you wish me to?

20 MR. SOBELMAN: I actually do, just to make sure we're
21 all talking about the same person.

22 THE COURT: Of course.

23 MR. SOBELMAN: The individual is Okechukwu Peter
24 Ezika, just for the record, so that when we all refer to the
25 prior person, the prior client, we can make sure we're talking

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1 about the same person.

2 THE COURT: It is very wise that you are doing that.
3 May I ask you, please, for the benefit of the reporter and the
4 judge, to spell the first name of that individual.

5 MR. SOBELMAN: I believe it's O-k-e-c-h-u-w-k-u, but
6 his name is also reflected on the docket in this case.

7 THE COURT: Okay. Thank you very much.

8 You understood, sir -- and let me ask, please:
9 Mr. Njemanze, you had the ability to speak with Mr. Spodek
10 about the name of this individual?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And when you heard the name, it wasn't
13 somebody you knew?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: I appreciate that. Thank you.

16 And, Mr. Sobelman, do you believe that's enough
17 inquiry in that matter?

18 MR. SOBELMAN: Yes, your Honor.

19 THE COURT: Thank you.

20 Now, Mr. Njemanze, you have the right to remain
21 silent. What I mean by that is, you're not required to make
22 any statements here, any statements to law enforcement
23 authorities, and if you've started to make a statement, you can
24 stop making the statement. If you've already made the
25 statements, you don't have to say any more, but if you do make

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1 a statement, that statement might be used against you at trial
2 or at another proceeding.

3 Are you aware of that, sir?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: It is your intention today, however, as I
6 understand it, to waive indictment and to enter a plea of
7 guilty to the information, the superseding information; is that
8 correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Let me talk to you about that, please,
11 sir.

12 I have a number of questions to ask you, and let me
13 explain the purposes that these questions serve.

14 The first thing that I want to do -- and I believe I
15 understand this already from having had five minutes of
16 discussions with you -- but I want to make sure that you are
17 competent to do each of these things that you wish to do today,
18 so I will ask you questions in that regard. And if, in fact,
19 you are competent, then I'll ask you some questions about your
20 rights to waive indictment and, separately, about the rights
21 that you have with respect to pleading guilty.

22 Just as I said at the beginning of this, sir, the most
23 important thing is that you understand what's going on. If
24 anything is unclear to you, please let me know. All right,
25 sir?

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1 THE DEFENDANT: Okay, ma'am.

2 THE COURT: Thank you.

3 Ms. Noriega, can you, please, swear in Mr. Njemanze.

4 THE DEPUTY CLERK: Yes, your Honor.

5 (Defendant sworn)

6 THE DEPUTY CLERK: Thank you.

7 Please state your name for the record.

8 THE DEFENDANT: Njemanze, Kemakolam.

9 THE COURT: May I ask you, please, sir, to spell your
10 name?

11 THE DEFENDANT: Last name N-j-e-m-a-n-z-e, first name
12 Kemakolam, K-e-m-a-k-o-l-a-m, middle name Gozie, G-o-z-i-e.

13 THE COURT: Thank you very much. And you are welcome
14 to be seated.

15 Let me just pause for a moment. Let me ask the
16 pretrial services officer: It would be my preference to go
17 through the plea proceeding before addressing the issue of bail
18 because I think it would impact it, but I don't want to
19 complicate your entire afternoon. If the parties agree to take
20 it out of order, I can do the bail proceedings at this time.

21 MR. CHAN: Whatever is your wish, your Honor. I'm
22 fine to stay.

23 THE COURT: Okay. Then I thank you very much for
24 doing that. Thank you.

25 Mr. Njemanze, how old are you, sir?

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1 THE DEFENDANT: Thirty-five, ma'am.

2 THE COURT: Thirty-five. Thank you.

3 I should let you know the significance of my having my
4 deputy place you under oath is that if you answer any of the
5 questions that I'm about to ask you falsely, you could be
6 prosecuted for a separate offense. That offense is known as
7 perjury.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes, ma'am, I do.

10 THE COURT: Mr. Njemanze, how far did you go in
11 school?

12 THE DEFENDANT: Bachelor's in engineering.

13 THE COURT: Was that here in the U.S. or in Nigeria?

14 THE DEFENDANT: Back in Nigeria.

15 THE COURT: Sir, have you ever been treated or
16 hospitalized for any form of mental illness?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Were you now, or have you recently been,
19 under the care of a doctor or a psychiatrist?

20 THE DEFENDANT: Psychiatrist? No, ma'am.

21 THE COURT: Let me ask the other question. It's my
22 fault for combining them.

23 Have you recently been under the care of a doctor,
24 sir?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Are you comfortable discussing the medical
2 condition on the record?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Could you tell me, please, the reasons --
5 were you seeing a doctor for a regular checkup or for something
6 more specific?

7 THE DEFENDANT: I had heart problems a couple of
8 months back, so I went -- I had this chest pain, I went to the
9 hospital, and they had to -- they checked my troponin, they
10 said it was high, my blood pressure was high, so they admitted
11 me in the hospital. I was there about six days or thereabout.
12 Then, two days after I was admitted, they had to rush me -- I
13 underwent a heart procedure.

14 THE COURT: You were having a heart attack, sir, or a
15 heart condition?

16 THE DEFENDANT: I almost had a heart attack.

17 THE COURT: I see.

18 THE DEFENDANT: That's what the doctor said. So,
19 afterwards, he placed me on heart attack prevention
20 medications.

21 THE COURT: Blood thinners or something of that type,
22 sir?

23 THE DEFENDANT: Yes, blood thinners as well, yes,
24 ma'am.

25 THE COURT: Okay.

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1 When was the last time you were hospitalized for your
2 heart conditions?

3 THE DEFENDANT: April 2018.

4 THE COURT: About a year ago?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Are you continuing to take medication --

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: -- for your heart conditions?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: About how many medications are you taking,
11 sir?

12 THE DEFENDANT: About five.

13 THE COURT: And do you know what they are? And it's
14 fine if you don't. You can --

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Tell me, please, what they are and speak
17 slowly, because I want to make sure I understand them.

18 THE DEFENDANT: Hydrochlorothiazide, Coreg,
19 amlodipine, atorvastatin, and aspirin.

20 THE COURT: Each of those is designed to aid your
21 heart's -- the issues that your heart was having?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do these medications, alone or in
24 combination, impact your ability to see, hear, or understand
25 what's going on in the courtroom this afternoon?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Other than the medical attention you
3 received for your heart, have you recently been under the care
4 of a doctor for any other reason?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you ever been treated or hospitalized
7 for any form of addiction, including drug or alcohol addiction?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: In the last two days, other than the
10 medications we've just talked about for your heart, have you
11 taken any drugs, medicine, or pills of any type?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: In the last two days, have you consumed
14 any alcoholic beverages?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Is your mind clear today, sir?

17 THE DEFENDANT: Sorry?

18 THE COURT: Yes. Is your mind clear today?

19 THE DEFENDANT: Yes, ma'am. Yes.

20 THE COURT: Do you understand what's happening in this
21 courtroom this afternoon?

22 THE DEFENDANT: Yes, ma'am, I do.

23 THE COURT: And let me, please, speak with your
24 attorney.

25 Mr. Spodek, have you had enough of an opportunity to

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1 discuss this matter with your client?

2 MR. SPODEK: Yes, your Honor.

3 THE COURT: Do you believe he understands the rights
4 that he has, and that he would be waiving, if he decided to
5 proceed by way of information and if he decided to plead guilty
6 to that information?

7 MR. SPODEK: Yes, your Honor.

8 THE COURT: Do you believe he understands these
9 proceedings this afternoon?

10 MR. SPODEK: Absolutely.

11 THE COURT: Do you have any doubt as to his
12 competence?

13 MR. SPODEK: No doubts, your Honor.

14 THE COURT: Thank you.

15 Mr. Sobelman, the same question: Do you have any
16 doubt as to Mr. Njemanze's competence to waive indictment, if
17 he wishes to do so, or to plead guilty, if he wishes to do so?

18 MR. SOBELMAN: No, your Honor.

19 THE COURT: Thank you for letting me know.

20 Mr. Njemanze, based on your representations and your
21 discussions with me this afternoon, based as well on my
22 observations of your demeanor here in court, based on the
23 conversations that I've just had with your attorney and with
24 the attorney for the government, I find that you are fully
25 competent to waive indictment, if you wish to do so, and to

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1 enter a plea of guilty, if you wish to do so.

2 I'm going to ask you, sir: Do you have a copy of a
3 document in front of you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I just want you to let me finish my
6 question. And I understand you're trying to be very helpful,
7 but I want the record to be clear.

8 I have a document that, in the upper right-hand
9 corner, says "Waiver of Indictment." Do you have a similar
10 document, sir?

11 THE DEFENDANT: Yes, ma'am, I do.

12 THE COURT: The copy that I have has three signatures
13 on it.

14 Does yours, as well, have three signatures?

15 THE DEFENDANT: Yes, ma'am, it does.

16 THE COURT: Is one of those signatures yours?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I'm going to mark my copy as Court Exhibit
19 1, just so that we know the document we're speaking of, and you
20 will see I've written it in the upper right-hand corner. Do
21 you see that, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Before you signed this document, did you
24 read it?

25 THE DEFENDANT: Yes, ma'am, I did.

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1 THE COURT: Before you signed this document, did you
2 discuss it with your attorney?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand, sir, that you are under
5 no obligation to waive indictment in this case?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you also understand that if you did not
8 waive indictment, and the government wanted to bring charges
9 against you, they would have to present those charges to a
10 grand jury, and that grand jury might decide to indict you on
11 those charges and it might decide not to indict you on those
12 charges?

13 Are you aware of that, sir?

14 THE DEFENDANT: Yes, ma'am, I am.

15 THE COURT: Do you understand that by waiving
16 indictment, what you're doing is giving up your right to have
17 this case presented to the grand jury?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I've used the term "grand jury." Do you
20 know what I'm speaking of when I use that term, sir?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: I don't want to know the specifics of your
23 communications, but have you discussed with your attorney what
24 the grand jury is and what purposes it serves?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Do you need any information, additional
2 information, from me about the grand jury or your right to
3 proceed by way of indictment?

4 THE DEFENDANT: No, ma'am. That's fine.

5 THE COURT: And is it your wish, sir, to proceed by
6 way of information, to waive your right to proceed by
7 indictment?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Spodek, do you know of any reason why
10 I should not find that your client has knowingly and
11 voluntarily waived his right to be indicted?

12 MR. SPODEK: No, your Honor.

13 THE COURT: And, Mr. Sobelman, the same question: Do
14 you know of any reason why I should not find that Mr. Njemanze
15 has knowingly and voluntarily waived his right to be indicted
16 by a grand jury?

17 MR. SOBELMAN: No, your Honor.

18 THE COURT: Thank you.

19 Mr. Njemanze, again, based on our conversations, I
20 find that you are knowingly and voluntarily waiving your right
21 to proceed by way of indictment, and I am going to authorize
22 the filing of the information in this case, and it's been
23 marked "Superseding Information," it says in the upper
24 right-hand corner S6:18 CR 117.

25 Do you see that, sir?

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1 THE DEFENDANT: Yes, ma'am, I do.

2 THE COURT: You have a copy of this information, as do
3 I.

4 Have you read this document, sir?

5 THE DEFENDANT: Yes, ma'am, I have.

6 THE COURT: Have you had whatever time you needed to
7 discuss this document with your attorney?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Njemanze, would you like me to read
10 this document in open court?

11 THE DEFENDANT: No.

12 THE COURT: You will waive its public reading, sir?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay.

15 More specifically, sir, have you had enough of an
16 opportunity to speak with your attorney about the charge to
17 which you intend to plead guilty and any possible defenses that
18 you might have to that charge?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Without giving me the specifics of your
21 communications, has your attorney explained to you the
22 consequences of entering a plea of guilty?

23 THE DEFENDANT: Yes, ma'am, he has.

24 THE COURT: Are you satisfied with his representation
25 of you in this matter?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Mr. Njemanze, what I'm going to do is
3 change topics right now. I'm going to talk to you about rights
4 that you have under the Constitution and laws of the United
5 States. These are rights that you would be waiving were you to
6 enter a plea of guilty in this case. You have been paying very
7 careful attention to everything that I've said. I'm going to
8 ask you to continue to do that. And if anything is confusing
9 to you, sir, please let me know.

10 Will you do that?

11 THE DEFENDANT: Yes, ma'am, I will.

12 THE COURT: Mr. Njemanze, under the Constitution and
13 laws of the United States, you have the right to enter a plea
14 of not guilty to the charge contained in this information. Do
15 you understand that, sir?

16 THE DEFENDANT: Yes, ma'am, I do.

17 THE COURT: If you decided to plead not guilty, you
18 would be entitled to a speedy and public trial by a jury on the
19 charge contained in the information. Do you understand that,
20 sir?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: And I'm using the term "information." I
23 know the document says "Superseding Information." But do you
24 understand that's what I'm speaking of?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: I appreciate it. I thought you did.

2 If there were a trial, sir, you would be presumed to
3 be innocent, and the government would be required to prove you
4 guilty by competent evidence beyond a reasonable doubt before
5 you could be found guilty.

6 Do you understand that, sir?

7 THE DEFENDANT: Yes, ma'am, I do.

8 THE COURT: A jury of 12 people would have to agree
9 unanimously that you were guilty of this offense. You would
10 not have to prove that you were innocent of the offense if you
11 went to trial.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, ma'am, I do.

14 THE COURT: At a trial, and at every stage of your
15 case, you are -- of your prosecution, you are entitled to the
16 assistance of an attorney. If, and to the extent that you
17 could not afford an attorney, one is appointed for you at
18 public expensive, free of cost to you, in order to represent
19 you.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: If there were a trial in this case, the
23 government's witnesses would have to come into court and
24 testify in your presence, your attorney could cross-examine the
25 government's witnesses, he could object to the government's

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1 evidence, and he could offer evidence on your behalf if you
2 wanted him to do so. You would also have the right to have
3 subpoenas, or other documents, or process used in order to
4 compel witnesses to testify in your defense.

5 Do you understand that, sir?

6 THE DEFENDANT: Yes, ma'am, I do.

7 THE COURT: If there were a trial in this case, sir,
8 you would have the right to testify, if you wanted to do so,
9 and you would have the right not to testify, if you wanted not
10 to do so. If you decided not to testify, no one, including the
11 jury, could draw any inference or suggestion of guilt from your
12 decision not to testify.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am, I do.

15 THE COURT: Another consequence of entering a guilty
16 plea in this manner is that you are giving up, or waiving, your
17 right to seek suppression, or exclusions, of the government's
18 evidence against you.

19 Are you aware of that, sir?

20 THE DEFENDANT: Yes, ma'am, I am.

21 THE COURT: So have you had enough of an opportunity
22 to speak with your attorney about whether there is any basis to
23 seek suppression or exclusion of part or all of the
24 government's evidence against you?

25 THE DEFENDANT: Yes, ma'am, I have.

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1 THE COURT: Do you understand, sir, that if you were
2 convicted after a trial, you would have the right to appeal
3 from the jury's verdict?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: Do you also understand that even now, as
6 you're entering this guilty plea, you have the right to change
7 your mind and to enter a plea of not guilty to the charge
8 contained in the information?

9 THE DEFENDANT: Yes, ma'am, I do.

10 THE COURT: Mr. Njemanze, if you plead guilty, and if
11 I accept your guilty plea, you will give up your right to trial
12 and the other rights that I've been discussing with you, other
13 than your right to an attorney. You have the right to an
14 attorney whether you plead guilty or go to trial. But if you
15 plead guilty, and if I accept your guilty plea, there will be
16 no trial, I will enter a judgment of guilty on Count One of
17 this information, I will sentence you at a later date based on
18 information that I receive from you here today, information
19 that I receive from the United States Probation Office in a
20 document known as a presentence investigation report, and
21 information that I receive from you and your attorney and from
22 the attorney for the government at the time of sentencing.

23 If you plead guilty, and if I accept your guilty plea,
24 there would be no appeal on the issue of whether the government
25 could use the evidence that it has against you. There would

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1 also be no appeal on the issue of whether you committed the
2 offense to which you plead guilty. I appreciate that I've said
3 a lot there, sir, but I've watched you follow along.

4 Do you understand each of the things I've said?

5 THE DEFENDANT: Yes, ma'am, I do.

6 THE COURT: I also want to make sure you understand
7 that by pleading guilty, you will have to give up, at least in
8 part, your right not to incriminate yourself. What I mean by
9 that is: I will ask you questions later in this proceeding to
10 confirm that you are pleading guilty because you are, in fact,
11 guilty and not for some other reason. You will have to admit
12 and acknowledge your guilt of the offense charged in Count One.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am, I do.

15 THE COURT: Mr. Njemanze, do you understand each of
16 the rights that I've been discussing with you?

17 THE DEFENDANT: Yes, ma'am, I do.

18 THE COURT: Would you like me to provide any
19 additional or clarifying information about any of those rights?

20 THE DEFENDANT: No, that's fine. Thank you.

21 THE COURT: Sir, are you willing to give up your right
22 to trial and these other rights that I've mentioned to you and
23 enter a plea of guilty to Count One of this information?

24 THE DEFENDANT: Yes, ma'am, I do.

25 THE COURT: Let us, then, talk about that charge.

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1 You are charged with participating in a conspiracy to
2 commit money laundering. That's in violation of Section
3 1956(h) of Title 18 of the United States Code. Are you aware
4 of that, sir?

5 THE DEFENDANT: Yes, ma'am, I am.

6 THE COURT: Mr. Njemanze, I'm going to ask for your
7 attention, and I will be paying attention as well. I'm going
8 to ask the prosecutor to outline for both of us the elements of
9 this offense.

10 Thank you, Mr. Sobelman.

11 MR. SOBELMAN: Count One of the superseding
12 information charges the defendant with conspiring to commit
13 money laundering. Specifically, the elements are that: Two or
14 more people agreed to violate the money laundering laws of the
15 United States, and that the defendant was part of that
16 agreement.

17 The particular object of Count One has five elements,
18 as charged in the indictment:

19 First, that one conducted or attempted to conduct;

20 Two, a financial transaction;

21 Three, knowing that the property involved in such a
22 financial transaction represented the proceeds of some form of
23 unlawful activity;

24 Four, which, in fact, involved the proceeds of
25 specified unlawful activity, here, wire fraud;

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1 And, five, that the defendant acted with the knowledge
2 that the transaction was designed, in whole or in part, to
3 disguise the nature, location, source, ownership, or control of
4 the proceeds of the specified unlawful activity.

5 THE COURT: Okay. Thank you very much.

6 Mr. Njemanze, were you able to hear the prosecutor
7 just now?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand, sir, that if you were
10 to proceed to trial, that is what the government would have to
11 prove at a trial?

12 THE DEFENDANT: Yes, ma'am, I understand.

13 THE COURT: Mr. Sobelman, you'll please excuse me if I
14 overlooked this. Did you discuss venue at all?

15 MR. SOBELMAN: I didn't, your Honor.

16 THE COURT: Is this a case in which venue is waived?

17 MR. SOBELMAN: I believe it is, your Honor.

18 THE COURT: Thank you.

19 Mr. Spodek, do you agree, sir?

20 MR. SPODEK: Yes, your Honor.

21 THE COURT: Thank you.

22 Just so that Mr. Njemanze is clear, sir, when I speak
23 about venue, what I mean is that some piece of the offense took
24 place in this district. Do you understand that, sir?

25 THE DEFENDANT: Yes, ma'am, I do.

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1 THE COURT: That is something that can be waived. I
2 understand from your counsel that venue in the Southern
3 District of New York is being waived. Is that your
4 understanding as well?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right.

7 Sir, what I'm going to do now is to talk to you about
8 the maximum possible penalties that are associated with this
9 offense. Maximum means most, and it's the most that is
10 permitted by statute. And I'm doing that, sir, because I want
11 to make sure you understand that by entering a plea of guilty,
12 you're exposing yourself to the possibility of receiving any
13 combination of punishments up to the statutory maximum terms
14 that I'm about to describe for you.

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, ma'am, I do.

17 THE COURT: I'm going to begin with restrictions on
18 your liberty.

19 The maximum term of imprisonment for this offense is
20 20 years' imprisonment. Do you understand that, sir?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: Do you understand that any term of
23 imprisonment that I impose could be followed by a term of up to
24 three years of supervised release?

25 THE DEFENDANT: Yes, ma'am, I do.

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1 THE COURT: Let me talk to you for a moment, please,
2 about supervised release.

3 When I use that term, what I mean is a period of time
4 where you are subject to supervision by the United States
5 Probation Office. There are terms and conditions of supervised
6 release that you would have to follow, and if you were unable
7 or unwilling to follow those terms and conditions of supervised
8 release, the possibility exists that you could be sent to
9 prison without a jury trial to serve term after a revocation of
10 your supervised release. If that were the case, you could not
11 get any credit for any time that you had spent serving a term
12 of imprisonment. You would also not get any credit for any
13 time that you had spent on supervised release in compliance
14 with its terms.

15 Do you understand each of those things, sir?

16 THE DEFENDANT: Yes, ma'am, I do.

17 THE COURT: I also want to make sure that you
18 understand that there is no parole in the federal system. If
19 you were sentenced to a term of imprisonment, you would not be
20 released early on parole. There is the possibility that you
21 could earn credit against your sentence for good behavior, but,
22 generally speaking, you'd have to serve approximately
23 85 percent of any term of imprisonment imposed.

24 Do you understand that, sir?

25 THE DEFENDANT: Yes, ma'am, I do.

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1 THE COURT: There are also certain financial penalties
2 that are associated, and these are in addition to any
3 restrictions on your liberty.

4 The maximum allowable fine here is the greatest of
5 these three things: \$500,000, twice -- let me say this
6 correctly -- twice the value of the property involved.

7 Yes, those are the two things; am I correct,
8 Mr. Sobelman?

9 MR. SOBELMAN: Yes, your Honor.

10 THE COURT: Thank you very much.

11 So that would be the maximum allowable fine, the
12 greater of these two things.

13 I can order restitution to any person or entity
14 injured as a result of your conduct, which, here, may be
15 calculated at \$45,745.74.

16 I can order you to forfeit any property derived from
17 the offense or used to facilitate the offense.

18 And I must order a mandatory special assessment of
19 \$100 per count of conviction.

20 Do you understand each of those things, sir?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: And do you understand that those are the
23 maximum possible penalties that are associated with this
24 offense?

25 THE DEFENDANT: Yes, ma'am, I do.

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1 THE COURT: Mr. Njemanze, I need to ask you a series
2 of questions. Not all of these questions may apply to you, but
3 I ask them in all cases.

4 Are you a United States citizen?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Do you understand, sir, that a guilty plea
7 could have adverse effects on your immigration status, and that
8 could include further detention following completion of any
9 term of imprisonment and/or the possibility of your removal or
10 deportation from the United States?

11 Are you aware of that, sir?

12 THE DEFENDANT: Yes, ma'am, I am.

13 THE COURT: Without giving me the specifics, have you
14 discussed the possible immigration consequences of your plea
15 with your attorney?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Mr. Sobelman, given the last set of
18 answers, I'm not going to ask Mr. Njemanze about civil rights
19 he may lose. Do you agree, sir?

20 MR. SOBELMAN: Yes, your Honor.

21 THE COURT: Thank you.

22 Mr. Njemanze, this is going to sound like an odd
23 question. It is not meant to be. Are you serving any other
24 sentence at this time, sir?

25 MR. SPODEK: Jail sentence.

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Are you being prosecuted in any other
3 jurisdiction other than this one?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: The reason I ask these questions is that
6 for some people, they have state criminal proceedings going on
7 at the same time as federal criminal proceedings, or sometimes
8 there are folks who have parole board proceedings at the same
9 time they have these federal proceedings. What I wanted to
10 make sure you understand is that resolving the case before me
11 doesn't necessarily resolve any other case that you might have.
12 If this is the one case of which you're aware, we'll just focus
13 on this one.

14 Without giving me the specifics, sir, have you and
15 your attorney discussed the process of sentencing?

16 THE DEFENDANT: Yes, ma'am, we have.

17 THE COURT: Do you understand that in connection with
18 sentencing, there are a list of factors that I must consider?
19 They're contained in a statute that is 18, United States Code,
20 Section 3553(a). So they're sometimes called the 3553(a)
21 factors.

22 Are you aware that there are those factors that I must
23 consider at sentencing?

24 THE DEFENDANT: Yes, ma'am, I'm aware.

25 THE COURT: One of those factors, sir, is something

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1 called the United States Sentencing Guidelines.

2 Is that a term with which you're familiar?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: If I use the term "guidelines" or
5 "sentencing guidelines," that's what I'm referring to.

6 What I'd like to make sure you understand, sir, is
7 that if anyone has attempted to predict for you what your
8 ultimate sentence may be, their prediction could be incorrect.
9 I will be the judge sentencing you. I need to hear from you
10 today, I need to hear from the probation office in the future,
11 and I need to hear from you, and your attorney, and the
12 attorneys for the government at sentencing.

13 So, do you understand, sir, that today, no one can
14 predict with any confidence what your ultimate sentence will
15 be?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And do you also understand, sir, that if
18 your ultimate sentence is different from what your attorney or
19 anyone else might have suggested that it might be, if it's
20 different from what you expected or hoped for, and if it's
21 different from any range contained in any agreement that you
22 might have with the government, you would still be bound by
23 your guilty plea? What I mean by that is you would not be able
24 to withdraw your guilty plea based merely on dissatisfaction
25 with your sentence.

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1 Are you aware of that, sir?

2 THE DEFENDANT: Yes, ma'am, I am.

3 THE COURT: Mr. Njemanze, it is my understanding that
4 you are pleading today pursuant to a written plea agreement
5 with the government. Am I correct?

6 THE DEFENDANT: Yes, ma'am, you are.

7 THE COURT: In connection with this proceeding, I have
8 been given a letter. The letter is dated February 8th of 2019,
9 and it is from the United States Attorney's Office for the
10 Southern District of New York, and it is sent to your attorney,
11 Mr. Spodek. It is a letter, and it includes, as well, certain
12 exhibits, including a consent preliminary order of forfeiture.

13 Have you seen this document, sir?

14 THE DEFENDANT: Yes, ma'am, I have.

15 THE COURT: Do you have a copy in front of you, sir?

16 THE DEFENDANT: Yes, ma'am, I do.

17 THE COURT: Is this your written plea agreement with
18 the government?

19 THE DEFENDANT: Yes, ma'am, it is.

20 THE COURT: I am marking the copy that I've been given
21 as Court Exhibit 2, and at the end of this proceeding, I will
22 give my copy to the government to keep safe in connection with
23 sentencing.

24 I'm going to ask you, please, to turn to page 6 of
25 this letter. Are you there, sir?

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1 THE DEFENDANT: Yes, ma'am, I'm there.

2 THE COURT: On page 6, there are four signatures. Are
3 there four signatures on your page 6, sir?

4 THE DEFENDANT: Yes, there are, ma'am.

5 THE COURT: Is one of them yours?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Did you sign this document today, sir?

8 THE DEFENDANT: Yes, I did, your Honor.

9 THE COURT: Did you sign it in the presence of your
10 attorney?

11 THE DEFENDANT: Yes, ma'am, I did.

12 THE COURT: Before signing this document, did you read
13 it?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: Did you discuss it for whatever length of
16 time you needed to with your attorney?

17 THE DEFENDANT: Yes, we did discuss it.

18 THE COURT: Did you understand this document at the
19 time you signed it?

20 THE DEFENDANT: Yes.

21 THE COURT: I'm going to review certain portions of
22 the document with you, sir, and I will not review every page of
23 it. But I am going to ask you if you could turn to the first
24 page -- actually, yes, let's go with the first page. Are you
25 there, sir?

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1 THE DEFENDANT: Yes, your Honor, I'm there.

2 THE COURT: The last paragraph of the first page
3 indicates that you are admitting to the forfeiture allegation
4 that is associated with Count One of this information. You're
5 agreeing to forfeit to the United States a sum of money equal
6 to \$103,359.24, representing the amount of property involved in
7 the offense.

8 Is that your understanding, sir?

9 THE DEFENDANT: Yes, ma'am, it is.

10 THE COURT: Are you, in fact, admitting to the
11 forfeiture allegation that is contained in the indictment?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I'm going to ask you, as well, please,
14 sir, to turn to page 2. Tell me when you're at page 2, please.

15 THE DEFENDANT: I'm there, ma'am.

16 THE COURT: In the first full paragraph of page 2,
17 you're agreeing to make restitution in the amount of \$45,745.74
18 in accordance with certain statutes. The statutes listed there
19 are the federal restitution provisions.

20 Are you, in fact, agreeing to do that, sir?

21 THE DEFENDANT: Yes, ma'am, I am.

22 THE COURT: For the remainder of this page, it is my
23 understanding that you and the government are agreeing, or
24 stipulating, that the guidelines apply to your case in a
25 particular way.

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1 Is that your understanding, sir?

2 THE DEFENDANT: Yes, ma'am, it is.

3 THE COURT: Mr. Njemanze, you do understand that I did
4 not sign this agreement. You did, your attorney did, the
5 government did. I'm not bound by it. I have an independent
6 obligation to calculate the sentencing guidelines as they apply
7 to your case. I am not saying that I am coming up with a
8 different number, but I am saying that I have an independent
9 obligation to calculate them.

10 Do you understand that, sir?

11 THE DEFENDANT: Yes, ma'am, I do.

12 THE COURT: Do you also understand that if I correctly
13 calculate the guidelines and come up with a different range
14 than you and the government have arrived at, that would not be
15 a basis for you to withdraw from your guilty plea?

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, ma'am, I do.

18 THE COURT: I'm going to ask you, please, to turn to
19 page 4 of the agreement, and let me know when you've gotten to
20 page 4.

21 THE DEFENDANT: I'm there, ma'am.

22 THE COURT: I'm looking at the second full paragraph.
23 It begins with the words, "It is agreed."

24 Do you see that, sir?

25 THE DEFENDANT: Yes, ma'am, I do.

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1 THE COURT: It is my understanding that this paragraph
2 is a collection of waivers. You and the government are each
3 waiving your right to appeal or otherwise challenge your
4 sentence through a habeas petition, a motion to vacate the
5 sentence, a motion to correct the sentence, a motion for a
6 sentence reduction, or any other way, if certain things happen
7 at sentencing.

8 Is that your understanding as well, sir?

9 THE DEFENDANT: Yes, ma'am, it is.

10 THE COURT: I will talk to you about your waivers.

11 It is first my understanding that you are agreeing not
12 to appeal or otherwise challenge any sentence of imprisonment
13 within or below the stipulated guidelines range of 18 to 24
14 months' imprisonment. So if I impose a term of 24 months'
15 imprisonment or something less than that, you are agreeing not
16 to appeal or otherwise challenge that piece of your sentence.

17 Am I correct, sir?

18 THE DEFENDANT: Yes, ma'am, you are.

19 THE COURT: I also understand that you're agreeing not
20 to appeal any term of supervised release that is less than or
21 equal to the statutory maximum of three years. So if I were to
22 impose a term of three years of supervised release or something
23 less than that, you are agreeing not to appeal that piece of
24 your sentence.

25 Am I correct?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I also understand that you are agreeing
3 not to appeal any restitution figure that is less than or equal
4 to \$45,745.74; is that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And you are agreeing not to appeal any
7 forfeiture amount that is less than or equal to \$103,359.24; am
8 I also correct, sir?

9 THE DEFENDANT: Yes, ma'am, you are.

10 THE COURT: If you look a little bit further down, at
11 the last paragraph on that page -- and this carries over onto
12 page 5 -- you're recognizing that this guilty plea and this
13 conviction may make it very likely that you will be deported
14 from the United States, or that it is presumptively mandatory,
15 or, at the very least, that you are at risk of being deported,
16 or suffering other adverse immigration consequences.

17 Have you read that paragraph, sir?

18 THE DEFENDANT: Yes, ma'am, I have.

19 THE COURT: And do you understand that there may be
20 adverse immigration consequences that occur as a result of this
21 guilty plea? Is that your understanding?

22 THE DEFENDANT: Yes, ma'am, I do.

23 THE COURT: Mr. Njemanze, does this agreement that you
24 and I have been talking about this afternoon constitute your
25 complete and total understanding of the agreement you have with

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1 the government?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Has anything been left out, sir?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: All right. I wanted to ask the question
6 from both sides. So let me ask a different question:

7 Other than what is contained in this plea agreement,
8 has anyone made you any promise or offered you any type of
9 inducement in order to get you to sign this agreement or to
10 plead guilty here this afternoon?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Has anyone forced or threatened you to
13 sign this agreement or to plead guilty here this afternoon?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Has anyone made you any promise as to what
16 your ultimate sentence will be?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Could you please tell me, in your own
19 words, what it is you did that makes you believe that you are
20 guilty of the offense charged in Count One of this information?

21 THE DEFENDANT: Conspiracy to commit money laundering.

22 THE COURT: All right. Let me, please, talk to you
23 about that.

24 Did this take place -- well, would you prefer that I
25 ask you some questions, or is there more that you'd like to

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1 tell me, sir?

2 THE DEFENDANT: No, that's fine.

3 THE COURT: Okay.

4 Sir, I'm understanding that this conduct took place
5 between 2016 and at least 2017; is that correct?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And so in conspiring, what you did, as I
8 understand it, was you agreed with other people; is that
9 correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you agreed to commit a criminal act;
12 is that also correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: When I say you agreed with other people,
15 the people with whom you had this agreement, they were not law
16 enforcement, were they, sir?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay.

19 So was your agreement to conduct transactions that
20 involved the proceeds of wire fraud? Is that fair to say, that
21 you were basically engaging in financial transactions involving
22 the proceeds of wire fraud? Is that fair?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And you did so, or you agreed with others
25 to do this, so that the fact that they were the proceeds of

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1 wire fraud could be concealed; is that correct, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: At the time that you did this, did you
4 know that what you were agreeing to do was to conceal the fact
5 that these transactions, or the money involved in these
6 transactions, was the proceeds of wire fraud?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Did you also know, sir, that what you were
9 agreeing to do was wrong and illegal?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: One moment, please, sir?

12 (Pause)

13 THE COURT: Mr. Spodek, do you know of any valid
14 defense that would prevail at trial or any other reason why
15 Mr. Njemanze should not be permitted to plead guilty?

16 MR. SPODEK: No, your Honor.

17 THE COURT: Thank you.

18 Mr. Sobelman, are there additional questions that you
19 would like me to ask Mr. Njemanze?

20 MR. SOBELMAN: No, your Honor.

21 THE COURT: Could you please tell me, sir, were this
22 case to proceed to trial, what types of evidence might be
23 introduced at that trial?

24 MR. SOBELMAN: Your Honor, among other things, there
25 would be evidence from -- there would be electronic evidence

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1 from the defendant's -- one moment?

2 THE COURT: Of course.

3 (Pause)

4 MR. SOBELMAN: -- from a codefendant's phone that
5 shows extensive communications between this defendant and that
6 codefendant engaging in the conspiracy that your Honor just
7 questioned the defendant about.

8 THE COURT: Yes.

9 MR. SOBELMAN: There would also be bank records,
10 financial records, and financial analysis showing the flow of
11 funds and the connections to the conversations and messages
12 between this defendant and that codefendant.

13 In addition, there would be victim testimony that
14 describe the ways in which they were defrauded in the
15 underlying wire fraud scheme and the fact that they sent the
16 money not understanding where it was going, having been lied
17 to, to accounts that were either controlled by or transacted in
18 by this defendant and his codefendant.

19 THE COURT: Thank you for letting me know.

20 Mr. Njemanze, did you just now hear the prosecutor?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you understand, sir, that if this case
23 were to proceed to trial, that would be part or all of the
24 government's evidence at that trial?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Mr. Spodek, do you agree that there is a
2 sufficient factual predicate for a guilty plea?

3 MR. SPODEK: Yes, your Honor.

4 THE COURT: Is there any reason why I should not
5 accept it?

6 MR. SPODEK: No, your Honor.

7 THE COURT: Mr. Sobelman, do you agree that there is a
8 sufficient factual predicate for a guilty plea?

9 MR. SOBELMAN: Yes, your Honor.

10 THE COURT: Is there any reason why I should not
11 accept it?

12 MR. SOBELMAN: No, your Honor.

13 THE COURT: Mr. Njemanze, at this time do you wish to
14 enter a plea of guilty to Count One of Superseding Information
15 S6:18 CR 117?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Mr. Njemanze, because you've acknowledged
18 that you are, in fact, guilty as charged in this count, because
19 I'm satisfied that you know of your rights, including your
20 right to go to trial, because I'm satisfied that you're aware
21 of the elements of this offense and the penalties associated
22 with this, and because I find that you are knowingly and
23 voluntarily pleading guilty, I will accept your guilty plea,
24 and I will enter a judgment of guilty on Count One of this
25 information.

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1 At a later stage, sir, the case will proceed to
2 sentencing. And you heard me earlier speak about a presentence
3 investigation report that the probation office would prepare.
4 I'm going to order that that report not be prepared unless your
5 attorney or someone from his office is there with you at the
6 interview.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And, Mr. Njemanze, you'll come to
10 understand, I don't provide legal advice -- I'm not doing that
11 here -- I'm giving you a thought. You'll talk about the
12 thought with your attorney. If you choose to speak to the
13 probation officer about anything, I would ask that you ensure
14 that what you say to the probation officer is as complete and
15 as accurate as it can be. I say that because I rely very
16 heavily on the presentence report in deciding what is an
17 appropriate sentence. That presentence report is most useful
18 to me when it is accurate and when it is complete. You will
19 have an opportunity to see that report before I ever see it. I
20 invite you to look at it and to discuss it with your attorney,
21 and if there is anything that you wish to modify, or correct,
22 or object to, you will have an opportunity to do that.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, ma'am, I do.

25 THE COURT: Ms. Noriega, may I please have a

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1 sentencing date?

2 And may I ask the parties: Should we go out the
3 traditional 120 days or so?

4 MR. SOBELMAN: Yes, your Honor.

5 THE COURT: Okay.

6 Mr. Spodek, the same?

7 MR. SPODEK: Yes, that would be ideal, your Honor.

8 THE COURT: Thank you for letting me know.

9 Ms. Noriega?

10 THE DEPUTY CLERK: Yes, your Honor.

11 I had it for 90 days. Sorry.

12 THE COURT: Ninety days may be fine. I don't know
13 what the probation office is looking for these days.
14 Whatever -- we can try 90.

15 THE DEPUTY CLERK: Okay. July 16th, at 3:00 p.m.

16 MR. SPODEK: That's fine for us, your Honor.

17 MR. SOBELMAN: Yes, your Honor.

18 THE COURT: Okay. Thank you.

19 If it turns out the probation office needs more time,
20 they will certainly let us know.

21 Mr. Sobelman, to the extent you have not already done
22 so, please arrange to have the factual statement presented to
23 the probation office.

24 And, Mr. Spodek, in the next two weeks, if you could
25 arrange for the interview of your client.

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1 MR. SPODEK: Yes, your Honor.

2 THE COURT: I'll remind the parties I'd like the
3 defense sentencing submission two weeks in advance of
4 sentencing, the government's responsive submission one week in
5 advance of sentencing, so that I can have a meaningful
6 opportunity to look at them.

7 Let me now talk to the parties about the issue of
8 bail. It was my understanding -- it may still be my
9 understanding -- that the parties have reviewed the pretrial
10 services report that was prepared in connection with this case.

11 Am I correct?

12 MR. SOBELMAN: The government has, yes, your Honor.

13 THE COURT: Okay.

14 Mr. Spodek, you've seen it as well?

15 MR. SPODEK: Yes, I've reviewed it.

16 THE COURT: I have a copy as well. I've reviewed it.
17 Thank you for sending it to me in advance of this proceeding.

18 Have the parties discussed whether there is a set of
19 conditions on which the parties agree, and pursuant to which,
20 Mr. Njemanze could be released, and, if so, may I please hear
21 what that is?

22 MR. SOBELMAN: Yes, your Honor, we have. And we have
23 a set of conditions that we jointly propose to your Honor.

24 First, \$250,000 personal recognizance bond, cosigned
25 by three financially responsible persons;

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1 Second, supervision as directed by pretrial services;

2 Third, travel restricted to the Southern and Eastern
3 Districts of New York, and the Central District of California,
4 and points in between for purposes of travel to court
5 appearances, and, in addition, he may travel for work outside
6 of the Central District of California with preapproval by
7 pretrial services;

8 That he be required to surrender all travel documents
9 and refrain from making any new applications.

10 And I will note, as --

11 THE COURT: How does that work with the preceding
12 condition that you've just identified?

13 MR. SOBELMAN: By travel documents, we mean
14 international travel documents.

15 THE COURT: Thank you.

16 MR. SOBELMAN: Such as a passport. And I will note
17 that this defendant surrendered his passport to the agents
18 previously, and they will be providing that to pretrial
19 services.

20 THE COURT: Okay.

21 MR. SOBELMAN: That the Court impose a curfew to be
22 directed by pretrial services, which will be enforced by
23 electronic monitoring;

24 That the defendant maintain or seek employment;

25 And that the defendant shall be released on his own

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1 signature today, with two weeks to meet the conditions,
2 principally the three financially responsible persons cosigning
3 the bond.

4 THE COURT: Is there any provision or discussion about
5 drug testing or treatment? Do you wish it to be as directed by
6 the pretrial services office?

7 MR. SOBELMAN: Your Honor, we would have no objection
8 to that. We didn't discuss it, and my reading of the pretrial
9 services report is that he indicated no history of substance
10 abuse, but we defer to the Court on whether that's necessary.

11 THE COURT: Let me please speak with the pretrial
12 services officer.

13 In these situations, where there is no obvious history
14 of drug abuse, is it preferable that I not provide anything or
15 that I have it set up as drug testing and treatment as
16 directed?

17 MR. CHAN: Your Honor, we could have, on the new
18 disposition sheet, that we have indicated submit one urine
19 test; if positive, drug testing and treatment.

20 THE COURT: Is that your suggestion for this case?

21 MR. CHAN: Yes, we can have him do that.

22 THE COURT: Let me make sure that is still something
23 the parties would agree with.

24 MR. SOBELMAN: The government defers to the Court and
25 pretrial services on this.

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1 THE COURT: Okay.

2 Mr. Spodek, the same?

3 MR. SPODEK: Yes, Judge.

4 THE COURT: Okay. Thank you.

5 Let me, please, understand a little bit better the
6 travel situation. I have a pretrial services report that
7 recites a Baltimore, Maryland address, and, yet, I think I
8 understand from the report, that it is Mr. Njemanze's intent to
9 move out to California. Is that correct? You'll excuse me if
10 I'm a little bit confused as to which states are in play.

11 Mr. Spodek, do you want to be heard on this issue?

12 MR. SPODEK: Sure. Absolutely, Judge.

13 THE COURT: Thank you.

14 MR. SPODEK: The Maryland address is his --
15 historically his home address. He is living with a friend
16 currently in California, and he would like to remain living
17 with the friend during the pendency of this case.

18 THE COURT: Okay. I think I do understand that.

19 And the government has no objection to that?

20 MR. SOBELMAN: No objection, your Honor.

21 THE COURT: And, Ms. Chan, do you also agree with
22 this? There would be no problem in having him living in
23 California?

24 MR. CHAN: That should not be a problem. We will
25 request courtesy supervision in California.

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1 THE COURT: As a matter of courtesy, they would also
2 handle the electronic monitoring and the curfew?

3 MR. CHAN: That is correct.

4 THE COURT: Thank you for letting me know.

5 One moment, please. I want to make sure I understand
6 these conditions before I agree to them. Thank you.

7 (Pause)

8 THE COURT: Counsel, I've accepted these conditions,
9 and they are as follows: A \$25,000 personal recognizance bond
10 signed by three financially responsible parties; travel
11 restricted to the Southern and Eastern Districts of New York,
12 the Central District of California, places covered by travel to
13 court, and travel for work as approved by pretrial services;
14 the surrender of travel documents and no new applications;
15 pretrial supervision, as directed by pretrial services; the
16 submission to one urinalysis, and if positive, the additional
17 condition of drug testing or treatment; a curfew and electronic
18 monitoring, as administered by the pretrial services office; a
19 directive that the defendant either continue or seek
20 employment; and Mr. Njemanze being released on his own
21 signature, with the remaining conditions met on or before
22 April 25th of 2019.

23 Is there anything that I've stated incorrectly?

24 MR. SOBELMAN: Your Honor may have said 25,000. I
25 believe it's 250,000.

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1 THE COURT: 250,000. I'm sorry if I said 25,000.

2 MR. SOBELMAN: Thank you, your Honor.

3 THE COURT: You'll excuse me. I saw and I heard
4 250,000.

5 MR. SOBELMAN: Thank you, your Honor.

6 THE COURT: So thank you.

7 All right. Mr. Spodek, you agree as well, sir?

8 MR. SPODEK: Yes, your Honor.

9 THE COURT: Thank you very much. I will adopt that.

10 (Pause)

11 THE COURT: Counsel, I've done three duplicate
12 originals, which I think will suffice. I'm going to have my
13 deputy show them to you, and you'll tell me if they will
14 suffice.

15 Is there something to be added?

16 MR. SOBELMAN: Nothing from the government, your
17 Honor.

18 MR. SPODEK: Nothing, Judge.

19 THE COURT: Okay. Nothing from pretrial services; is
20 that correct?

21 MR. CHAN: That's correct.

22 THE COURT: Okay. Thank you.

23 Mr. Spodek, may I address your client directly?

24 MR. SPODEK: Yes, your Honor, of course.

25 THE COURT: Thank you.

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1 Mr. Njemanze, as a result of the order that I've just
2 issued and handed out copies of, you will be released on a
3 series of bail conditions. You need to comply with those
4 conditions, sir. You must follow everything that you are
5 directed to do by the pretrial services officer, and you must,
6 as well, abide by anything that is specified in that order.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, ma'am, I do.

9 THE COURT: If you do not, I don't want to overstate
10 the matter by saying only bad things can happen, but the
11 possibility exists that you could be remanded, and if there are
12 cosigners on your bond, the possibility exists that the bond
13 could be foreclosed as to them.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, ma'am, I do.

16 THE COURT: More broadly, sir, if you are directed to
17 appear in this court, you have to be here. Right now, we've
18 set up a sentencing date or a next conference date of
19 July 16th, and you have to be here. If that date is changed,
20 you'll have to be here on the changed date. If you are not
21 present in this courtroom on a date and time where you've been
22 ordered to be present in the courtroom, you could be prosecuted
23 for a separate offense that is commonly known as bail-jumping.

24 Are you aware of that, sir?

25 THE DEFENDANT: Yes, ma'am, I am.

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1 THE COURT: So do I understand you're going to be here
2 when I order you to be here?

3 THE DEFENDANT: Yes, ma'am, I will be.

4 THE COURT: Okay. Thank you.

5 Is there anything else the government wishes to bring
6 to my attention in this proceeding?

7 MR. SOBELMAN: No, your Honor.

8 THE COURT: Thank you.

9 Mr. Spodek, is there anything that you'd like to bring
10 to my attention on behalf of your client?

11 MR. SPODEK: No, your Honor.

12 THE COURT: I thank you very much for staying this
13 afternoon. We are adjourned. Thank you.

14 * * *

JC95njeS sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 117 (KPF)

5 KEMOKALAM NJEMANZE,

6 Defendant.

7 -----x

8 December 9, 2019
9 3:10 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

BY: JULIANA MURRAY

17 Assistant United States Attorney

18 TODD A. SPODEK

19 Attorney for Defendant

20 ALSO PRESENT: GREGORY HOLM, Secret Service

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record, beginning with the government.

MS. MURRAY: Good afternoon, your Honor. Juliana murray on behalf of the United States. I am joined at counsel table by Special Agent Gregory Holm, with the U.S. Secret Service.

THE COURT: Good afternoon to both of you, and thank you.

Hello, Mr. Spodek.

MR. SPODEK: Good afternoon, your Honor. Gregory Spodek and to my left is Mr. Kemokalam Njemanze.

THE COURT: Good afternoon to both of you.

Sir, I may have mispronounced your client's last name. May I have his preferred pronunciation?

THE DEFENDANT: Njemanze.

THE COURT: I am having difficulty with the N, but thank you.

Mr. Spodek, is there anyone else here in the courtroom to support your client today?

MR. SPODEK: Yes, your Honor. In the second row is Ms. Kelechi Ukpaka who is Mr. Njemanze's girlfriend.

THE COURT: Okay. Thank you and, yes, I believe I read about her in the presentence investigation report so she is welcome. Thank you very much for coming this afternoon.

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1 Let me make sure I have the documents I should have in
2 connection with sentencing. I have a presentence investigation
3 report and it is dated September 12 of 2019. I have a
4 sentencing submission that is dated December 3rd, with
5 exhibits, including some certificates. I have a government
6 sentencing submission that is dated December 4 of 2019. I have
7 a submission that I have just received in the last few hours
8 with some additional materials on behalf of Mr. Njemanze. I
9 have a notice of intent to request judicial removal, a consent
10 preliminary order of forfeiture money judgment, and an order of
11 restitution.

12 Ms. Murray, should I have anything else from the
13 government?

14 MS. MURRAY: No, your Honor.

15 THE COURT: Thank you.

16 Mr. Spodek, should I have anything else from the
17 defense?

18 MR. SPODEK: No, Judge.

19 THE COURT: Good to know. Thank you.

20 Ms. Murray, if I could begin with you, has the
21 government had a sufficient opportunity under Federal Rule of
22 Criminal Procedure 32 to review the presentence investigation
23 report in this case?

24 MS. MURRAY: Yes, your Honor.

25 THE COURT: And are there any objections to its

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1 contents?

2 MS. MURRAY: Your Honor, the only point that I would
3 note, and I need to find the citation, with respect to the
4 defendant's status, in preparing the JRO for this proceeding we
5 learned that the defendant does not have any legal status in
6 the U.S., he is not a green card holder. My understanding is
7 that he was a visa overstay subject to removal under INA
8 Section 237(a)(1)(B). There was an application that he had
9 filled out and submitted but it was never approved so there was
10 never any legal status conferred to the defendant.

11 THE COURT: So, you are looking at the information
12 page, page 2 of the PSR, which indicates that his immigration
13 status is one of permanent resident with a green card. Is that
14 correct?

15 MS. MURRAY: Yes. Thank you, your Honor; yes.

16 THE COURT: Mr. Spodek, do you agree that that is an
17 error in the presentence investigation report?

18 MR. SPODEK: Yes, Judge; I do.

19 THE COURT: We will make that change.

20 Mr. Spodek, let me turn to you, sir. Have you and
21 your client had sufficient opportunity, under Federal Rule of
22 Criminal Procedure 32, to review the presentence investigation
23 report in this case?

24 MR. SPODEK: Yes, your Honor.

25 THE COURT: And we have just talked about one

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1 correction that the government has proposed. Do you have any
2 corrections or objections to propose to the report, sir?

3 MR. SPODEK: Nothing in addition to that one.

4 THE COURT: Okay. Don't go too far away, sir, I have
5 a couple more questions for you.

6 MR. SPODEK: Yes, your Honor.

7 THE COURT: Thank you.

8 May I address your client directly?

9 MR. SPODEK: Yes. Of course.

10 THE COURT: Mr. Njemanze, have you had an opportunity
11 to review the presentence investigation report in this case?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And to the extent there was any
14 information that you wanted to communicate to the probation
15 officer to give to me, were you able to give that information
16 to your attorney?

17 THE DEFENDANT: Could you repeat that again?

18 THE COURT: Of course. I will ask that question
19 better.

20 To the best of your understanding, everything in the
21 presentence report is correct, sir?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And to the extent that there was
24 information that you wanted me to know, were you able to give
25 that information to your attorney?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And so his submissions to me in connection
3 with this case reflect that information?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Thank you.

6 Mr. Spodek, an additional question for you, sir. At
7 the back of this presentence investigation report beginning at
8 page 22 there are mandatory and standard and special conditions
9 of supervised release. Have you had an opportunity to review
10 those with your client?

11 MR. SPODEK: Yes, your Honor.

12 THE COURT: Do you have any objection to any of the
13 proposed special conditions of supervised release?

14 MR. SPODEK: No, your Honor.

15 THE COURT: And may I, sir, refer to them collectively
16 as the mandatory, standard, and special conditions of
17 supervised release rather than reading them into the record?

18 MR. SPODEK: Yes, your Honor.

19 THE COURT: And, again, may I address your client
20 directly?

21 MR. SPODEK: Of course.

22 THE COURT: Thank you.

23 Mr. Njemanze, have you just heard me speaking with
24 defense counsel about the conditions of supervised release. Do
25 you recall reviewing those with your attorney?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And, for convenience, if it is okay with
3 you, I am going to refer to them as a group as the mandatory
4 standard and special conditions, without reading each one here
5 in open court.

6 Are you comfortable with that, sir?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Will you understand what I am referring
9 to, sir?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Thank you for letting me know.

12 Mr. Spodek, you may sit down for a little bit, sir.

13 MR. SPODEK: Yes, your Honor.

14 THE COURT: Ms. Murray, a few questions for you,
15 please.

16 You are welcome to tell me that you would rather
17 answer these in your general sentencing presentation but just a
18 few things I would like clarification on. There is, to me,
19 some confusion about Mr. Njemanze's marriage because I think I
20 am understanding from the government's submission that you have
21 a belief that it may have been entered into principally or
22 solely for the purpose of obtaining status in this country and
23 not for some other reason.

24 Do you want to be heard on that further?

25 MS. MURRAY: If I may have a moment, your Honor?

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1 THE COURT: Yes, you may.

2 MS. MURRAY: Thank you.

3 THE COURT: And if I misunderstood your submission,
4 please, tell me.

5 (Counsel conferring)

6 (Pages 9-15 SEALED by order of the Court)

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(In open court)

THE COURT: Mr. Spodek, you are welcome to sit down.

Thank you.

MR. SPODEK: Yes, your Honor.

THE COURT: Let me, before I forget, adopt the presentence investigation report, the factual findings that are contained in it and the guidelines calculations that are contained in it.

Ms. Murray, I would like to hear from you in connection with sentencing and I want to hear from you on whatever you want to tell me. There are a few issues raised in Mr. Spodek's submission that would be useful for me to have your position on and some of them I believe are addressed in your written submission but I will ask you, nonetheless, to repeat it. They include the statements that Mr. Njemanze was in a nonsupervisory role with minimal financial gain, sort of a lesser player in this conspiracy, especially when compared with someone like Mr. Ifeanyi Ezeji; secondly, that I should consider the collateral immigration consequences that he has that not everyone in this case has.

I think those are the principal issues that are emphasized in his submission but whatever else would you like to tell me, I am here to hear.

MS. MURRAY: Thank you, your Honor, and I will address those points briefly but I am happy to answer any other

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1 specific questions your Honor has on those points.

2 For the reasons that were in our written sentencing
3 submission, the government believes that a guideline sentence
4 is appropriate in this case. The primary reasons are the
5 nature and seriousness of the offense. As we know, these
6 business e-mail compromise schemes do have real victims. These
7 are crimes where the frauds are carefully constructed to evade
8 detection and to deceive people, innocent people and unwitting
9 victims, whose funds are stolen.

10 Just to give one specific example, for your Honor,
11 there is a woman named Susan Bell who was one of the victims of
12 this scheme. She is the person whose \$45,000 and change is the
13 subject of the order of restitution. It was a woman who was
14 purchasing a home and in the process of her home loan she was
15 provided what she believed to be a valid e-mail indicating that
16 she should wire the funds for her home loan to a certain place.
17 Unknown to her this was actually one of the e-mails that was
18 part of the business e-mail compromise scheme that the
19 defendant participated in. So, her \$45,000 and change went to
20 this conspiracy rather than to its intended purpose which was
21 to assist her in purchasing a home.

22 This defendant, in particular, coordinated with
23 Mr. Ifeanyi Ezeji, among others, about Susan Bell, and we know
24 that from the agent's review of electronic evidence in this
25 case. We have seen a video that Ifeanyi Ezeji sent to this

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1 defendant that is essentially a video, it is effectively a
2 screenshot showing the wire transfer of this \$45,000 and
3 change. And there is also communications within the electronic
4 communications that indicates Ms. Bell's name.

5 So, we know that this defendant was involved in that
6 particular example of one of the acts in this conspiracy. It
7 is just one example but so that your Honor understands his role
8 in the conspiracy.

9 He also coordinated the transfer of funds including
10 not only with Ifeanyi Ezeji but with other co-conspirators in
11 other countries like Nigeria.

12 Now, with respect to his role and his relative
13 culpability, which I think goes to a point made in the defense
14 submission and also to your Honor's question, the government
15 does agree that he is less culpable than Ifeanyi Ezeji, for
16 example. That said, in the flowchart of the co-conspirators
17 that have been charged in this case, we do believe he is in the
18 middle somewhere. He is actively coordinating the transfer of
19 funds and his participation is not limited to one
20 co-conspirator. For example, he is not just coordinating with
21 Ifeanyi Ezeji. He is not a slightly more isolated member of
22 the conspiracy like, for example, Christopher Ezeji, who did
23 passports but that was his role and that was a limited cap and
24 role. This defendant did have involvement with multiple
25 members of the conspiracy whether it was direct text, WhatsApp

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1 messages, directing wire transfers, confirming wire transfers
2 of members of the conspiracy who were not in the United States.

3 So, we take no position on whether it was a
4 supervisory role or not but I would say it was an active role
5 and it certainly wasn't a limited role in the way that some of
6 the other less culpable defendants in this case had.

7 We also believe that a guideline sentence is
8 appropriate in this case to promote adequate deterrence, both
9 specific deterrence for this defendant and general deterrence.
10 On the specific deterrence point I don't disagree that the
11 immigration consequences are a factor for this defendant that
12 weren't necessarily present for other defendants. This
13 defendant has consented to judicial removal upon his sentencing
14 so there is less concern with this defendant not being
15 adequately deterred than there would have been with other
16 defendants who would stay in the country. It is a bit
17 convoluted, I am happy to say that again, but I do agree that
18 that is a factor that again can be and should be considered in
19 determining deterrence and what sentence is appropriate. That
20 said, in addition to the specific deterrence here, we believe
21 that a sentence within the guidelines range is necessary to
22 adequately deter other individuals who might be involved in
23 this kind of fraud -- other individuals, whether they have
24 legal immigration status or not but individuals who may not
25 make a lot of profit from the scheme but who do a lot of harm

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1 and who create a lot of costs to innocent victims.

2 So, with respect to the profit that this defendant
3 made, I know the defense has suggested that it was around
4 \$6,000 from his role in the scheme, if that's the case that's a
5 minimal conflict. That said, we have over \$100,000 in
6 identifiable losses that this defendant was responsible for
7 with his co-conspirators including, as I mentioned, one
8 identifiable victim and \$45,000 for that single transaction.

9 So, small amount of profit personally perhaps, but
10 even if an individual doesn't profit, the government want to
11 make sure that this conduct is deterred because, as I said,
12 there are real victims.

13 THE COURT: Just one moment, please?

14 MS. MURRAY: Yes.

15 THE COURT: I am understanding from paragraph 70 of
16 the presentence investigation report that Mr. Njemanze came
17 here in or about February of 2016. I thought I understood as
18 well from the information or the charging instrument in this
19 case that the criminal conduct was from 2016 until 2017. Is it
20 the government's understanding that the defendant came here
21 just to participate in this fraud or for some other reason?
22 And, should that matter?

23 MS. MURRAY: If I may have just a moment, your Honor?

24 THE COURT: Take whatever time you need, please.

25 MS. MURRAY: Thank you.

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1 (Counsel conferring)

2 MS. MURRAY: Your Honor, it is not our understanding
3 that the defendant came to the U.S. in February of 2016 for the
4 specific purpose of participating in this conspiracy. I'm not
5 exactly sure how the dates charged in the superseding
6 information, if it is a generality in or about 2016. I'm not
7 sure how he those match up with his arrival. We do understand
8 that he also had legitimate employment at or around the time
9 that he came to the U.S. in early 2016.

10 THE COURT: Could you remind me, please, the length of
11 time over which the entire conspiracy existed?

12 MS. MURRAY: Yes, your Honor. Just one moment,
13 please.

14 (Counsel and Agent conferring)

15 MS. MURRAY: Your Honor, the approximate time period
16 of the conspiracy was around September of 2016, those are some
17 of the first specific victims and transactions involving the
18 conspiracy that we have identified; September 2016 until around
19 August of 2017 when Ifeanyi Ezeji was arrested.

20 THE COURT: Why I am asking is that, at paragraph 79
21 of the presentence investigation report, it recites that
22 Mr. Njemanze was unemployed from his arrival here in February
23 of 2016 until September of 2017. So, your statements to me
24 about his having a history of continued employment, it seems
25 that it pre-dates and post-dates his conduct that brings him

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1 here before me today.

2 MS. MURRAY: Your Honor, that appears right to me from
3 the presentence report. I don't -- and I apologize if I
4 misspoke -- it is my understanding that he did not come for the
5 purpose of the conspiracy. I guess I should say I don't have
6 an understanding of why he did come.

7 THE COURT: Thank you.

8 MS. MURRAY: I do understand that at some point in his
9 time in the U.S. he has had legitimate employment but I don't
10 have an understanding of whether that is why he came to the
11 U.S.

12 THE COURT: I appreciate the clarification and I will
13 let you continue.

14 MS. MURRAY: Essentially I am finished, your Honor.

15 I would just note, again to the point that your Honor
16 had raised and that the defense has raised, the government also
17 contends that a guideline sentence is appropriate here to avoid
18 unwarranted sentencing disparities between this defendant and
19 his co-defendants who have been charged. At page 3 of our
20 written submission we provided to the Court a table that shows
21 other defendants in this case and we ranked those in what we
22 believe is our best understanding of the relative order of
23 culpability and that table also shows the guidelines range of
24 each of those defendants and then for those who have been
25 sentenced the sentence that has been imposed. For the reasons

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1 that we laid out in that table and then also in the discussion
2 about this defendant's relative role in the conspiracy, we
3 believe that a sentence within the 18 to 24 months guideline
4 range would appropriately reflect the seriousness of this
5 defendant's conduct in the offense, would appropriately
6 encourage adequate deterrence for this defendant and general
7 deterrence, and would be appropriate in light of the other
8 defendants in this case this.

9 THE COURT: Thank you very much.

10 Mr. Spodek, I will hear from you now, sir.

11 MR. SPODEK: Your Honor, Kemo, as I know him, is 35
12 years old, stands before you as a current resident -- not in
13 the immigration vocabulary but is a resident of America for
14 four years. He has been working throughout those four years as
15 an electronic medical record consultant and proof of that I
16 believe was provided to pretrial and, in fact, I did request
17 your Honor give permission for some employment jobs over the
18 time of this case. He was making approximately \$3,200 a week
19 so almost \$150,000 annually if he had steady employment.

20 THE COURT: I am understanding this began in 2017; is
21 that correct?

22 MR. SPODEK: The employment, your Honor, or the
23 conspiracy?

24 THE COURT: No, sir; the employment. I am looking, in
25 particular, at paragraph 79 and 80 of the presentence

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1 investigation report and it recites unemployment from February
2 2016 through September of 2017, and then employment as a
3 self-employed electronic medical record consultant since
4 September of 2017.

5 I just want to make sure that's correct.

6 MR. SPODEK: Yes, Judge; that is correct.

7 THE COURT: Okay. Please go from there, sir.

8 MR. SPODEK: He has had a number of opportunities for
9 gainful employment here and really has taken advantage of the
10 life that he can make here. He came to the U.S. for economic
11 reasons and, as your Honor is keenly aware, these financial
12 frauds are rampant in Nigeria and people that he knows from
13 home are involved in them and he has taken responsibility for
14 getting himself mixed up into something that will forever
15 affect him, his family, his girlfriend, his future, his career.
16 Every aspect of his life has been permeated by his decision to
17 be involved in this.

18 He took responsibility early on, he took a timely
19 plea, he tried to cooperate to the best of his abilities. Even
20 though he may not have been a hundred percent forthright in the
21 initial stage of the meeting he ultimately was forthright and I
22 think that is commendable and I think that it's easy for an
23 outsider to look at a meeting with the government and say *How*
24 *is that you weren't a hundred percent forthright and honest*
25 *from the minute you start talking?* but the pressures are

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1 immeasurable. And when you are a foreigner at one of these
2 meetings and your whole life is on the line, often times it
3 takes a minute and consultation with your attorney to come to
4 terms with the situation and express yourself honestly. And
5 that's what he ultimately did.

6 Judge, from my calculation and my understanding he may
7 have made about \$1,500 to a max of \$5,000. So, we are talking
8 about a conspiracy here that's 11 months, we are talking about
9 someone who didn't have enough information to cooperate. By
10 the government's own account he didn't have enough information.
11 He was a middle-man conveying messages between people and he
12 made a horrible mistake and he possibly profited to the tune of
13 \$5,000 max and I believe the government would agree with that
14 number, or \$6,000 going that far.

15 THE COURT: But you would agree that he is tied to
16 losses in excess of \$100,000?

17 MR. SPODEK: Yes, your Honor. Yes, I would. It is
18 just his personal profit as far as his involvement.

19 Judge, he certainly didn't have any sort of
20 supervisory role, he didn't set anything in motion, he did
21 didn't create the scheme or tried to arrange for other people
22 to be involved in the scheme. He was a player in the scheme
23 but it certainly wasn't something that he created and was
24 trying to perpetuate. I think it is worth noting that I
25 believe the scheme continued on past his involvement. So, I do

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1 think that at some point he wasn't involved anymore and that he
2 wasn't actively involved.

3 THE COURT: When did you understand the period of his
4 involvement to span, sir?

5 MR. SPODEK: Judge, if I could have one moment?

6 THE COURT: Of course. Take whatever time you need.

7 (Defendant and counsel conferring)

8 MR. SPODEK: Judge, from my investigation and my
9 conversations with my client, he ceased communicating with
10 Mr. Azika around March of 2017.

11 THE COURT: Sir, is that Mr. Ezeji or Mr. Azika?

12 MR. SPODEK: Ezeji. Ezeji.

13 THE COURT: Yes; Ifeanyi Ezeji. Okay, yes. Tell me
14 again, please, the month, sir?

15 MR. SPODEK: So, from my investigation and my
16 understanding, he was involved from September 2016 until around
17 March of 2017.

18 THE COURT: Okay. Thank you. Please continue.

19 MR. SPODEK: Judge, as you have seen from my
20 sentencing submission, this is someone who has tried to make a
21 better life here and certainly has tried to improve himself and
22 be a productive member of society here. We have attached a
23 number of certificates as well as the fact that he was giving
24 blood and that he has created some GoFundMe pages to help with
25 people who suffer from diseases.

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1 Lastly, Judge, the only thing that I would bring up is
2 that the collateral consequences for him are severe. He is
3 going to be deported back to Nigeria. He has agreed, he has
4 taken the burden away from the government to necessarily
5 litigate that issue. And his life, again, won't be the same no
6 matter what. The opportunities are not there in Nigeria like
7 they are here and he, unfortunately, will not necessarily be
8 able to come back to the United States and I think that's
9 something your Honor should take into consideration.

10 I think all of those points along with the points I
11 raised in our original submission and the amended one warrant a
12 sentence of time-served, Judge. I hope your Honor will take
13 all of that into consideration.

14 Thank you.

15 THE COURT: Thank you very much.

16 Mr. Njemanze, if you would like to speak to me now in
17 connection with your sentencing I would be happy to hear from
18 you. You are not obligated to speak with me but you are
19 invited to do so. And, if you do speak with me, I will take
20 very seriously what you have to say. What I will ask you, sir,
21 is that if you are speaking that you speak louder and slower
22 than you think you need to so that everyone in this courtroom
23 can hear.

24 Would you like to be heard, sir?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: I will hear from you now. Thank you. You
2 are welcome to be seated or stand, however you are more
3 comfortable.

4 THE DEFENDANT: I will stand.

5 Thank you, your Honor. Thank you everyone. Forgive
6 me if I get emotional at some point.

7 THE COURT: It is very understandable, sir.

8 THE DEFENDANT: So, I moved to this country four years
9 ago for the reason of seeking greener pastures, trying to
10 assist my family because it was a tough time in Nigeria at that
11 point.

12 So, after that, getting here, I have always been a
13 patient person, you know, but at some point I think I lost my
14 ability to be patient because I really need that to assist to
15 do a lot. And then I received a call four years ago, the call
16 has changed my life and, honestly, if I could take back the
17 hands of time I would not have received that call for any
18 reason. What I did was utterly disgusting. There is no
19 excuse. And this brought me closer than I could ever imagine
20 to God and I have asked God for forgiveness and I hope I will
21 be forgiving him also.

22 I have my father who will be so disappointed because
23 he raised me better. I have someone also that I let down. To
24 all of you, I am sorry.

25 THE COURT: Take your time, sir. Don't worry. We can

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sentence

1 pause.

2 THE DEFENDANT: I'm sorry, your Honor.

3 THE COURT: That's okay.

4 THE DEFENDANT: Whatever punishment I have at this
5 time, it's -- it's whatever it is, no problem. Like I said, I
6 have asked God for forgiveness and I hope you will forgive me
7 also.

8 Thank you very much.

9 THE COURT: Thank you very much.

10 What I am going to do now is what I do in all
11 sentencings or almost all sentencings and that is to take a
12 break so that I can think about everything that's just been
13 said here, think about the written materials I have received,
14 and come back with what I hope is the fairest sentence. So, I
15 will be away for about 5 for 10 minutes, I will come back as
16 soon as I can, and I will ask for your a patience during that
17 time.

18 Thank you all very much.

19 (recess)

20 THE COURT: Ms. Murray, it turns out that I did have a
21 couple of questions that I came to while I was preparing so let
22 me ask this question first, please.

23 With respect to the government's restitution order and
24 schedule of victims there is a little bit of disconnect between
25 the name listed in the presentence investigation report and the

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1 name that is listed as the payee. I imagine maybe there are
2 two sides of the same transaction but may I hear from you on
3 that, please?

4 MS. MURRAY: Yes, your Honor; that's correct.

5 So, Susan bell is the name of the individual. The
6 payee that is listed in the restitution order is the loan
7 company or the mortgage company that is responsible for the
8 amount of money that was paid, for the \$45,000, because it was
9 a transaction Ms. Bell was making through a loan officer for a
10 home loan, that is the actual victim that is responsible for
11 the amount of that money.

12 THE COURT: Should I amend the presentence
13 investigation report to make clear that that restitution should
14 be payable to True Home Solutions, LLC, instead of to the Clerk
15 of the U.S. District Court for disbursement to her?

16 MS. MURRAY: Yes, your Honor. We would appreciate
17 that. Thank you.

18 THE COURT: Okay. So, Mr. Spodek, you don't a
19 disagree, sir; is that correct?

20 MR. SPODEK: No. Absolutely not.

21 THE COURT: Terrific. I will make that change at page
22 25 of the presentence investigation report. That was one
23 source of confusion.

24 Ms. Murray, just another question for you, please, and
25 perhaps the case agent might be useful on this as well. What I

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1 saw in the government's submission and in the presentence
2 investigation report were references to Mr. Njemanze sending
3 numerous text messages to Mr. Ezeji and to other members of the
4 conspiracy, and I guess the issue for me is I don't know what
5 numerous means. I can tell you that there are three that are
6 listed in the presentence investigation report and three could
7 be numerous but there could be tens, there could be hundreds,
8 there could be thousands of messages in this six-month time
9 frame and I am trying to get a sense of the volume of messages
10 or volume of communications that Mr. Njemanze had either with
11 members of the conspiracy whom I have met, or with individuals
12 whom you understand to be members of the conspiracy outside of
13 the group in the indictment.

14 MS. MURRAY: Yes. Just a moment, please?

15 THE COURT: Yes.

16 (Counsel conferring)

17 MS. MURRAY: Your Honor, my understanding with respect
18 to the electronic evidence is we have on the order of hundreds
19 of WhatsApp messages between the defendant and Ifeanyi Ezeji.
20 Certainly not tens, it is more in the magnitude of hundreds
21 relating to this conspiracy.

22 With respect to electronic communications with other
23 co-conspirators, from the electronic evidence that the
24 government has been able to retrieve through search and seize
25 in the course of the investigation, because we had Ifeanyi

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1 Ezeji's cell phone we don't have, as I understand, the
2 defendant's communications with other members of the conspiracy
3 but it is our understanding, both through the investigation,
4 our view of the defendant's role and then statements he made to
5 us during proffers, that he engaged in electronic
6 communications with other members of the conspiracy including
7 in countries like Nigeria.

8 THE COURT: Yes. I shouldn't know about the proffer
9 stuff and I therefore won't, but what you are saying is you
10 haven't done as deep a dive into those messages because you had
11 the evidence you needed from Ifeanyi Ezeji, yes?

12 MS. MURRAY: That's correct; and because the defendant
13 chose to waive indictment so we didn't complete our
14 investigation, necessarily, with respect to this defendant.

15 THE COURT: Thank you very much.

16 Mr. Spodek, if you want to be heard on this issue I
17 would be happy to hear from you, or you may just agree with
18 what the government has said.

19 MR. SPODEK: No. I have nothing to add, your Honor.
20 Thank you.

21 THE COURT: Okay. What I am going to do now is to
22 describe the sentence that I intend to impose but I will give
23 each side an opportunity to make legal objections before the
24 sentence is actually imposed.

25 We have spoken this afternoon about a number of

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1 purposes of sentencing and they are set forth in
2 Section 3553(a) of Title 18 of United States Code and I will
3 just list a few of them that come into play or that are
4 particular focus for me in this case.

5 I must consider the nature and circumstances of the
6 offense. I must consider the history and characteristics of
7 Mr. Njemanze. I must consider the need for the sentence
8 imposed to reflect the seriousness of the offense, to promote
9 respect for the law, to provide a just punishment for the
10 offense, to afford adequate deterrence to criminal conduct, to
11 protect the public from further crimes by Mr. Njemanze, and to
12 provide him with needed educational and vocational training,
13 medical care, or other correctional treatment in the most
14 effective manner. I must consider the sentencing guidelines
15 and I will speak about them momentarily. I must consider the
16 need to avoid unwarranted sentence disparities among similarly
17 situated defendants. And I must consider the need to provide
18 restitution to the victims.

19 Proceeding now to the guidelines calculations, I
20 replicate those in the presentence investigation report. The
21 base offense level is 8. There is an eight-level enhancement
22 for the amount of loss, and a two-level enhancement because the
23 conviction is under Section 1956 of Title 18 of United States
24 Code. There is a three-level reduction for acceptance of
25 responsibility and that yields an adjusted offense level of 15.

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1 Mr. Njemanze has no criminal history points and is
2 therefore in Criminal History Category I and his resulting
3 guidelines range is 18 to 24 months' imprisonment. The defense
4 has sought time-served or a below guidelines sentence. The
5 probation office has recommended a sentence at the bottom of
6 the range. The government has asked for a sentence within the
7 applicable guidelines range of 18 to 24 months.

8 Let me say that it mattered to me, the breadth and the
9 length and the importance of Mr. Njemanze's conduct in this
10 case and that is why I was asking the government because, to
11 me, there are folks in the case who might have been involved in
12 a more limited capacity or in other cases that there may be
13 individuals who are involved in perhaps passing one e-mail or
14 setting up one account and I think they are qualitatively
15 different from someone who is exchanging hundreds of e-mails
16 with the person who is at the top of the charged conspiracy in
17 my case and is also in communication with folks in other
18 countries. And, each of these e-mails was part of a fraud that
19 resulted in real losses to a number of victims.

20 I do appreciate very much and understand
21 Mr. Njemanze's efforts at accepting responsibility. I
22 understand and appreciate his participation in the judicial
23 removal order. I understand his meetings with the government.
24 For me, however, these do not counsel in favor of a time-served
25 sentence or even a non-guideline sentence but they counsel in

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1 favor of a sentence at or towards the bottom of the applicable
2 guidelines range.

3 Again, I am concerned about the sheer amount of time
4 and effort -- time being six months and many occasions in which
5 he could have stopped; and effort being his criticality to the
6 scheme insofar as he was able to put Mr. Ifeanyi Ezeji in
7 contact with individuals here and in other countries who were
8 very much involved in the losses.

9 I have considered, as well, while I don't think that
10 this is a case of specific deterrence, I do think this is a
11 case of general deterrence. I don't think it is appropriate,
12 for example, to give a serious below guideline sentence or a
13 serious downward variance under the guidelines just because
14 someone has overstayed their visa and has engaged in fraud and
15 is willing to return home.

16 Recognizing the degree to which Mr. Njemanze has
17 accepted responsibility but counter-balancing that by the scope
18 of the fraud and the significance to the victims, I am imposing
19 a term of 18 months' imprisonment and I am ordering that that
20 term be followed by a term of period of supervised release of
21 three years with the mandatory standard and special conditions
22 of supervised release.

23 I am not ordering a fine. I am ordering restitution
24 in the amount of \$45,745.74, and forfeiture in the amount of
25 \$103,359.24. And, I am obligated to impose a mandatory special

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sentence

1 assessment of \$100.

2 Ms. Murray, my understanding is that the difference
3 between restitution and forfeiture is that forfeiture was the
4 amount attributable to Mr. Njemanze's conduct, whereas the
5 restitution was the specific victim that you were able to
6 identify?

7 MS. MURRAY: That's correct, your Honor.

8 THE COURT: Thank you.

9 Ms. Murray, is there any reason why I may not impose
10 that sentence?

11 MS. MURRAY: No, your Honor.

12 THE COURT: Mr. Spodek, is there any reason why I may
13 not impose that sentence?

14 MR. SPODEK: No, Judge.

15 THE COURT: All right. Mr. Njemanze, please rise.
16 Sir, after considering all of the factors that are set forth in
17 Section 3553(a) of Title 18 of the United States Code, I find
18 that a term of 18 months' imprisonment is sufficient but not
19 greater than necessary to comply with all of the purposes of
20 sentencing. I will order that that term of imprisonment be
21 followed by a term of three years of supervised release
22 although, as a practical matter, that may be rendered a
23 academic if you were to be removed from this country.

24 I am not imposing a fine. I am imposing restitution
25 and forfeiture in the amounts that I have just listed, and I am

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obligated to impose a \$100 special assessment.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Please be seated, sir.

Mr. Njemanze, to the extent that you have not waived this in any plea agreement that you have with the government, you have the right to appeal from your conviction and from your sentence. If you are interested in appeal, I would ask you to speak with Mr. Spodek at your earliest opportunity. You have, generally speaking, two weeks from the date of entry of the judgment of conviction, and it is my expectation that that judgment will be entered tomorrow or the day after.

So, if appeal is something in which you are interested, please, speak with your attorney.

Do you understand, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Spodek, do you or your client have a place of designation that you would like me to recommend to the Bureau of Prisons?

MR. SPODEK: No, Judge.

I would ask your Honor to consider giving Mr. Njemanze time to self-surrender, if that's possible, considering his agreement to deportation and the 18-month term of imprisonment.

THE COURT: Does the government have a position with respect to that?

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1 MS. MURRAY: Your Honor, the government doesn't have a
2 position. It is my understanding that where there is a
3 judicial removal order at the time of sentencing the defendant
4 should be remanded or, in the alternative, will be taken into
5 ICE custody and that removal order will be effective
6 immediately. That is my understanding. That said, I don't see
7 anyone here who could take the defendant into custody so I'm
8 not really sure logistically --

9 THE COURT: Should I then?

10 MS. MURRAY: -- of the self-surrender situation.

11 THE COURT: Should I then refrain from executing the
12 judicial removal order? If there weren't that, what would the
13 government's position be?

14 MS. MURRAY: I'm candidly not sure, your Honor. I
15 don't know the mechanics of how these two interplay.

16 THE COURT: Let me ask the question more precisely.
17 Had you not signed the judicial removal order today,
18 what would your position be on behalf of your office?

19 MS. MURRAY: Had I not signed it today my position
20 would be that there is no objection to a self-surrender
21 situation for this defendant.

22 THE COURT: Okay. Thank you.

23 I will allow him to self-surrender and I will refrain
24 from filing the judicial removal order for some period of time.

25 Mr. Spodek, there is no recommendation for place of

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1 designation, sir.

2 MR. SPODEK: Judge, he is currently residing in Orange
3 County. If your Honor would be inclined to designate a
4 facility in that district, certainly that would be preferable.

5 THE COURT: All right.

6 MR. SPODEK: That's California, your Honor.

7 THE COURT: As distinguished from New York.

8 MR. SPODEK: Just making clear.

9 THE COURT: That is fine, sir. I did figure that out
10 based on some of the exhibits that you had submitted to me.

11 MR. SPODEK: Yes. Thank you, your Honor.

12 THE COURT: Sir, as well, my recollection is -- and
13 Ms. Murray you may have a different understanding -- it takes
14 about six weeks or so to actually get a designation
15 accomplished so I was going to suggest surrender in two months,
16 in 60 days.

17 Is there any objection to that, sir?

18 MR. SPODEK: No, Judge. That would be ideal.

19 THE COURT: Okay.

20 And Ms. Murray, is there objection to that with the
21 caveat you have already given me?

22 MS. MURRAY: No, your Honor. With that caveat, no.

23 THE COURT: I understand.

24 Ms. Noriega, may I have date in two months, please?

25 THE DEPUTY CLERK: Friday, February 7, before 2:00

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1 p.m.

2 THE COURT: Ms. Murray, are there any open counts? I
3 don't believe there are any but I will hear from you if there
4 are.

5 MS. MURRAY: I don't believe so, your Honor; no.

6 THE COURT: From your perspective is there anything
7 else that I need to do today?

8 MS. MURRAY: Not today, your Honor. Thank you.

9 THE COURT: Thank you.

10 Mr. Spodek, is there anything else, from your
11 perspective, that I need to do this afternoon?

12 MR. SPODEK: No, your Honor. Thank you very much.

13 THE COURT: All right. Thank you very much.

14 Mr. Njemanze, I wish you well, sir, and my expectation
15 is given the judicial order of removal, I will not be seeing
16 you again but I wish you good luck in all of your future
17 endeavors.

18 Thank you, sir.

19 THE DEFENDANT: Thank you, your Honor.

20 THE COURT: We are adjourned. Thank you.

21 o0o